

Obtaining Resources and Developing Contracts¹

I. Introduction

The key to developing a successful alternative dispute resolution program is to obtain upper management buy-in as well as resources for the development of a staff who can implement, support, and operate the program. While one person can serve in this capacity, it is certainly much easier to delegate responsibilities among staff. This chapter is designed to assist in assessing an agency's staffing needs and provide workable options to meet those needs. The first part of this chapter is therefore devoted to staffing resources.

An equally important part of an ADR program's development is planning of the budget. The resources allocated to the program will shape the size and scope of the design. The quality of a program is a function of the work of the design team and program coordinator, but adequate resources can make a quality program bigger and better. The second part of this chapter focuses on financial resources necessary to run a successful ADR program.

II. Staffing Resources

In order to develop the ADR program staff, it is important to do some strategic planning. Like any program, staff needs will increase as the program grows. It would be a mistake to try and start either over or under-staffed. Remember, additional staff can be added as needed. It is also important to keep long-term goals in mind while planning for immediate needs and resources.

In the beginning, it is helpful to develop an overall mission and then to set realistic, attainable goals which will bring the project to fruition one small step at a time. Remember to tie financial resources to staffing resources in your planning; this will be important when making certain staffing decisions. For example, if you do not have funding to pay for outside neutrals, you may need to consider a sharing neutrals or other similar no or low cost option.

ADR is about creativity and new ways of addressing old problems; do the same with the development of your program. Consider the

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following:

A. Staffing Positions

- 1. National ADR Coordinator**

This is the most important position in any ADR program and is required for federal agencies. The coordinator is responsible for overseeing the development and implementation of the program. This person will be responsible for all key decisions including determining the staffing and budgetary needs of the program.
- 2. Area and Regional Coordinators**

Large agencies who will be introducing ADR systems over a widespread geographic area may need to hire area and/or regional coordinators to assist the ADR coordinator in the performance of his or her duties.
- 3. ADR Specialist**

Depending on the size of your program, an ADR specialist can be very helpful in handling many of the routine tasks generated by the ADR office. This person's duties may include scheduling mediation or arbitration sessions, completing and tracking agency-required paperwork, responding to inquiries and directing callers to the appropriate individual, tracking budget requirements, tracking program statistics, supporting marketing efforts within the organization, and any other necessary tasks.
- 4. Program Evaluator**

If your agency has a large program and has decided not to seek a program evaluation from an independent source, it is important that someone complete this task inside the agency. This person can be helpful in developing a tracking system for the program and can conduct a continuous cost analysis that can be used to show success and justify further budgetary requests. If these duties do not require a full time position, you may choose to fill the position on a part time basis or give additional administrative responsibilities to this person to assist with other aspects of the program.
- 5. Neutrals**

Every program will use different ADR techniques and resources depending on the design and available budgetary resources. If your system uses an ombuds, you will need to fill this position. If outside neutrals such as mediators or arbitrators will be used, this will require different staffing considerations than the use of inside neutrals. Insiders may either work full time as neutrals or provide ADR services as a collateral function.
- 6. Trainers**

Some organizations have trainers on staff, but they may not be

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familiar with the appropriate material, so services will have to be purchased from an outside vendor. One opportunity to save money is

to hire an outside vendor to train your trainers in the necessary skills so that they can conduct future courses in-house.

B. Staffing Considerations

1. Full-Time Employees

The most effective ADR programs employ a staff of full-time employees who perform one or more of the functions described above. Full-time employees can remain focused and can devote all of their time to specific projects.

2. Part Time Employees

Depending on the size and complexity of your agency's program, certain specialists may be needed some, but not all, of the time. A part-time employee may be right for this position.

3. Shared Employees

Many employees have special skills or talents that may be helpful in the administration of the ADR program. You may wish to seek approval to include such persons on your team part-time.

4. Temporary Employees

In certain phases of ADR program implementation it may be necessary to do more work than other times. Temporary employees can fill this need. There are many skilled people who choose to work on a temporary basis and are available through numerous temporary employment agencies. These employees are paid only for the time they are used and there is no expectation of continuing employment at the end of the project.

5. Contractors

Contractors are usually hired when someone with special skills is needed. Some examples are trainers, ADR systems design consultants, program evaluators, and the like. They can assist in a specific project and are paid either hourly, daily, or on a per project basis. The use of a contractor provides a highly skilled individual without the costs of a high-level full-time employee.

C. Program Evaluation

The use of a program evaluator is a vital and necessary part of any successful ADR program. This position is different from most other positions in that the most comprehensive evaluations are conducted by someone with an expertise in research and statistics. These services can be obtained from an independent outside consultant or preferably someone from an educational institution. In many cases, educational institutions have their own grant writing staff and may be able to obtain funding for a research project. A partnership is mutually beneficial since you have the program and data, and they have the research capabilities.

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Another no or low cost opportunity is to partner with a doctoral student in need of data for a dissertation. This option is better suited for a smaller organization that will generate sufficient, but not overwhelming, amounts of data. Such an arrangement will generate a quality evaluation while simultaneously helping a student who has an interest in the field.

III. Financial Resources

The initial steps necessary to develop an ADR program: conducting an assessment of your agency's needs, developing buy-in from top level management, and working with a design team to create an effective program; can be accomplished by using existing resources. The design team must create a program that is consistent with available resources and the budget. When evaluating resources, it is important to consider the agency's current costs for resolving disputes (including money spent for independent contractors, e.g. researchers, trainers, mediators, attorneys, etc. as well as personnel time, management effort, employee morale, and customer satisfaction).

Use of this information will strategically increase the chances for further budget support if the pilot proves to be cost saving. To demonstrate savings, it is important to track costs. Once the program is designed and ready for pilot, initial financing must be in order. As stated throughout this manual, an agency may need to start small and use no or low cost neutrals. If this is the case, start the program by picking cases and disputes that are most appropriate for ADR in order to develop a positive track record.

Once the program achieves small successes, it is important to market that positive information to the decision-makers as well as the users. This marketing will help the program gain momentum, and key decision makers who see the cost savings will be more willing to assist in the future. Of course, it will have to be explained that continued success requires additional financial support from the agency. Prepare a proposed budget with projected savings and be prepared to present this to the decision-makers. The truth is that a successful ADR program can save significantly more money than it costs to operate.

A. Start-Up Cost

Every program will need start-up capital. If your agency has limited resources it may have to start small and grow over time. This way the initial needs can be obtained from an existing budget. It will be possible to get more done in less time if the agency establishes its own ADR budget. An ADR budget request should include:

- 1. Office Setup**
 - Furniture
 - Equipment
- 2. Human Resources (salaries and benefits)**
 - National ADR Coordinator
 - ADR Development Specialist
 - ADR Research Specialist
 - Training Specialist
 - Data Support and Integrity Analyst
 - Secretary/Receptionist
- 3. Organizational Resources**
 - Headquarters Training
 - Training of Staff Including Travel
 - Area/District Training
 - Briefing, Intake, and Introduction Sessions
 - Purchase Computer Training
- 4. Communication Resources**
 - Videos, Posters, Brochures, Newsletter, Mediation Roster, Presentations
- 5. Research**
 - Evaluation program

B. Training

- 1. Attending training** If the ADR coordinator has limited knowledge of ADR, he or she may need to attend some ADR training. Expect to pay anywhere from \$250 to \$1500 or more for a good ADR conference. Be sure to pick one that is skill based and focuses on the specific needs for your program. Also remember to include airfare (\$250 - \$650), meals and accommodations (\$400 - \$600), and miscellaneous expenses (\$100).

If upper management does not support attendance at training, it may be necessary to work harder on obtaining their buy-in before

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considering the introduction of ADR into the agency. It may also help to attend meetings of the Inter Agency Dispute Resolution

Working Group or contact ADR offices in other agencies with existing programs for advice.

2. Conducting training

In order to launch a program it may be necessary to hold various training sessions. Of course, the design will dictate the type of training required. For example, if your agency uses mediation, managers and the ADR staff will need to be trained in mediation techniques so they understand how to use the system.

C. Consultants

If your agency does not have any experience in ADR program development, you may need to hire an outside consultant to help sell the idea to upper management. This expert can help at a single or multiple stages of the process, all the way through final rollout. Consultants are expensive and can cost between \$1,000 - \$3,000 per day. It is important to speak to references and look into the consultant's background before hiring him or her. Also it may be possible to negotiate a lower price depending on the scope of the work. Most consultants want your agency's business and will negotiate.

D. Dos and Don'ts in Preparing Funding Requests

Prior to Obtaining Financial Resources:

DO:

- Be sure to know how to get funding in your agency.
- Include the advisory group in planning a budget.
- Cost out all of the steps in the strategic plan.
- Provide adequate funding for evaluations – hard data and success drives funding and other support.
- Provide adequate funding for training at different stages of the development of the program, including different types of training at various stages and for various audiences -- this will assist with marketing and getting buy-in throughout the agency.
- Be sure to know how to develop contracts for outside trainers and providers – It will be necessary to understand who must approve and sign off on all contracts. It is ideal to have a staff person on the ADR team who is responsible for and knows the agency

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contracting process.

- Include basic justification: including statement of agency need; program goals; research reports; design process; evaluation and tracking plans.

DON'T!

- Do not omit evaluation. Evaluation is necessary; negative feedback is as useful as positive feedback and will assist in overcoming program problems and understanding what works and what needs fixing.
- Do not undercut the program by skimping on training budgets. All participants need training; managers, employees, ADR staff, and mediators. Without training, the program will not function effectively.

IV. Developing Contracts

The task of developing contracts for mediation or other services, such as for consultants may appear to be quite overwhelming and cumbersome; however, proper legwork and knowledge of the contracting process within your agency will make the job easier.

In an attempt to simplify the process, the following steps guide you through the contracting process. Bear in mind that each agency operates differently and thus contracting policies and procedures will vary. This information is not meant to be definitive, it is meant only to provide you with steps that have been effective at other agencies.

STEP 1: Assess Your Needs

In order to determine the extent of needed services:

- Determine the duration for which the services will be required. For example will the service be needed on a continual basis or for only a specific period of time.
- Estimate how many mediations you might conduct during the next year. One way to calculate this is as a percentage of the cases in which you intend to offer mediation. For example, in FY 2000 the Postal Service determined that it would offer mediation to at least 90% of the 20,000 informal EEO complaints it expects to be filed. Of the 18,000 cases where mediation is offered, the Postal Service hopes to have 70% of the individuals accept mediation. Of the 12,600 cases where mediation is accepted,

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some will reach a resolution prior to mediation and some will change their mind. In summary, the Postal Service expects that approximately 10,000 EEO cases will actually go to mediation and negotiates for mediation services on this basis. An exact number of cases is not necessary in order to make contractual arrangements; however, you should be able to estimate whether 10 mediations, or 50, or 100 or 500 mediations are expected.

- Consider whether there is any geographic limitation for your services. Will the need for mediators be nationwide or limited to the D.C. Metropolitan area?
- Explore all potential uses for which a vendor may be used. For example, if you are considering use of a mediation provider for mediations, think about whether the mediation provider might also be used to conduct training for case tracking functions. All possible services a single vendor may provide must be outlined in any contractual arrangement.
- Determine what type of contractual agreement will best serve your needs. For example, if the choice is made to use another federal agency's resources (e.g., Federal Mediation and Conciliation Service) consider drafting an **interagency agreement**. An interagency agreement details the services to be rendered and formalizes the duties and responsibilities of each agency. If external mediators or a mediation center will be used, but not exclusively or for a definite number of cases, then creating an **Ordering Agreement**² may be appropriate if that is available in your agency.

STEP 2: Identify Available Resources

Any investment you make in contracting for mediation services will only be as good as the preparation you make in finding quality neutrals. In the short-term, looking at a mediation service provider may seem easier or more efficient, however, you may be sacrificing quality as you would not usually be given the opportunity to select from the entire range of mediators. Further, using a mediation provider service may be more expensive than working with mediators individually due to the overhead costs associated with using a mediation center.

A. General Services

GSA has developed a list of mediators and has negotiated a price for

² REDRESS™, the Postal Service's EEO mediation program currently uses this arrangement with each of its mediators nationwide. The Ordering Agreement is similar to a quotation in that mediators offer both hourly and session rates for their services, which the Postal Service either accepts or rejects. This Agreement is not a contract as it does not establish a date or time certain for the services to be performed.

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Administration (GSA)

these mediators, which would be available to all government agencies. The current GSA price is \$1765.00 per mediation.

B. Internet

One of the best places to find the resources you need is to use the Internet. Many companies and universities have established web sites to advertise their services. Use your search engine and look up words such as “conflict management,” “dispute resolution,” “mediation,” or “ombudsman,” and any other words that relate to the subject you are researching.

Many organizations have their own web sites that list resources and suggestions. Some helpful web sites are:

General Resources:

ADR and Mediation Resources

<http://www.adrr.com/>

[ADR Resource](http://www.adrr.com/)

<http://www.adrr.com/>

Mediation Information Resource center

<http://www.mediate.com>

Conflict Resolution Education Network (CRENet)

<http://www.crenet.org/>

Cornell University Legal Information Institute

http://www.law.cornell.edu/topics/collective_bargaining.html

Cornell/PERC - Institute on Conflict Resolution

<http://www.ilr.cornell.edu/depts/ICR/>

Emory Law Library

Electronic Reference Desk - ADR

<http://www.law.emory.edu/FOCAL/adr.html>

GMU Libraries Conflict Analysis and Resolution

<http://library.gmu.edu/resources/socsci/conflict.html>

Government Information Locator Service (GILS)

For Federal Register and Presidential Documents on ADR, etc.

http://www.access.gpo.gov/su_docs/gils/gils.html

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The 'Lectric Law Library Lawclopedia's Alternative
Dispute Resolution Topic Area

<http://www.lectlaw.com/tadr.htm>

Nova Southeastern University
Alternative Dispute Resolution Resources on the
Internet <http://www.nova.edu/ssss/DR/adrwww.html>

VA Mediation Program design
<http://www.va.gov/adr/index.html>

Organizations:

The Academy of Family Mediators
<http://www.igc.apc.org/afm>

American Arbitration Association
www.adr.org/

American Bar Association Section of Dispute
Resolution <http://www.abanet.org/dispute/home.html>

Better Business Bureau
Alternative Dispute Resolution Services
<http://www.bbb.org/complaints/index.html>

Conflict Resolution Center International
<http://www.conflictres.org/>

CPR Institute for Dispute Resolution
www.cpadr.org

Industrial Relations Research Association
<http://www.irra.ssc.wisc.edu>

National Arbitration Forum
Forum Library
<http://www.arb-forum.com/library/index.html>

National Association for Community Mediation
<http://www.igc.org/nafcem/>

National Institute for Dispute Resolution
<http://www.continet.com/nidr/index.html>

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Ohio Commission on Dispute Resolution and Conflict Management

<http://www.state.oh.us/cdr/>

The Ombudsman Association

<http://web.mit.edu/negotiation/toa/>

Online Ombuds Office (UMass)

<http://aaron.sbs.umass.edu/center/ombuds/default.htm>

Society of Professionals in Dispute Resolution

<http://www.spidr.org/>

Willamette Law Online

Dispute Resolution

<http://www.willamette.edu/law/wlo/dis-res/>

Government ADR Sites

Inter Agency Dispute Resolution Working Group

www.financenet.gov/iadrwg

Alternative Dispute Resolution at the General Services Administration Board of Contract Appeals –

<http://users.erols.com/arbmed/article.htm>

Army Materiel Command Alternative Dispute resolution Program

http://amc.citi.net/amc/command_counsel/

Defense Logistics Agency, ADR Home Page

www.dscc.dla.mil/offices/doccr/adr/adr

Department of Agriculture Conflict Prevention and Resolution Center – www.usda.gov/cprc/

Department of the Air Force Alternative Dispute Resolution Home Page – www.adr.af.mil

Department of Energy Office of Dispute resolution

www.gc.doe.gov/adr/index

Department of Justice Office of Dispute Resolution

www.usdoj.gov/odr/

Department of Labor Alternative Dispute Resolution

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www.dol.gov/dol/asp/public/programs/adr/main

Department of the Navy ADR Website

www.ogc.secnave.hq.navy.mil/adr/

Department of Veterans Affairs, Dispute Resolution Programs <http://www.va.gov/adr/descript.htm>

Equal Employment Opportunity Commission, Mediation <http://www.eeoc.gov/mediate/index.html>

Federal Aviation Administration
Alternative Dispute Resolution for Acquisition
<http://www.faa.gov/agc/>

Federal Energy Regulatory Commission, ADR Page
<http://www.ferc.fed.us/ogc/adr/adr.htm>

Federal Executive Board, Seattle
Alternative Dispute Resolution Committee
<http://www.northwest.gsa.gov/sfeb/sfebadr.htm>

Federal Labor Relations Authority, Collaboration and ADR Program <http://www.flra.gov/24.html>

General Services Administration Board of Contract Appeals Private Website maintained by GSBICA Judge Allan H. Goldman
<http://users.erols.com/arbmed/gsbica.htm>

Institute for Environmental Conflict Resolution
<http://www.ecr.gov/>
ECR's Roster of Environmental Neutrals
<http://www.ecr.gov/roster.htm>

Interagency ADR Working Groups
<http://www.financenet.gov/iadrwg.htm>

Interagency ADR Working Group, Contract and Procurement Section Electronic Guide to Federal Procurement ADR <http://www.adr.af.mil/iadrwg/>

National Institutes of Health, The Center for Cooperative Resolution <http://www4.od.nih.gov/ccr/>

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Office of Personnel Management, ADR Resource
Guide
<http://www.opm.gov/er/adrguide/adhome.html-ssi>

STEP 3: Develop Parameters For Bid Requests and Statements of Work

What billing arrangement will you accept?

There are a variety of billing arrangements used in the field of mediation. Each agency needs to evaluate the types of disputes to be mediated, the complexity of those disputes and other factors to determine what sort of billing arrangement will be most cost-effective.

Some mediators are in the practice of billing by the hour for mediation services. Mediators may also bill for each mediation session, regardless of length. Other mediators bill per case. Finally, some mediators are willing to provide a discounted rate for an entire day where two mediation sessions are conducted at the same location. For example, a mediator may charge \$400 for a single session but give a discounted rate of \$600 for two mediation sessions on the same day in the same location.

Most people think in terms of mediating a single case during a mediation and therefore, bill by the case. However, in some situations it may be feasible to mediate more than one case during a single mediation session and an agency would want to be sure it would not be charged twice for the same session. For example, the Postal Service has found that where the same supervisor and employee are involved, multiple EEO cases (with individual case numbers) can and should be mediated during a single session, thus mediators are paid by the session rather than by the case.

How will cancellations be handled?

It is inevitable that at some point a mediation must be cancelled at the last minute. What, if anything, will a mediator be paid in the event that a scheduled mediation is cancelled on short notice? The following is one example of a cancellation fee policy.

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A. Sample Cancellation Fee Policy

If the mediation session is canceled **more** than **72** hours prior to the scheduled mediation time **no fee will be paid to the mediator.**

If the mediation session is canceled **less** than **72** hours prior to the scheduled mediation time **but before** the mediator leaves their home or office to come to mediation the agency will pay a cancellation fee **not to exceed 25%** of the cost of the canceled mediation session. Where more than one session has been scheduled for the mediator for that day, **no cancellation fee** will be paid if at least one of the sessions occurs.

If the mediation session is canceled **after** the mediator is en route to the mediation and/or arrives to conduct the mediation, the mediator will be paid the full session price for the mediation except as described in the paragraph above which states that **no cancellation fee** will be paid if at least one of the sessions occurs.

If a mediation is cancelled due to inclement weather or a natural disaster, the mediation will be rescheduled within 14 days of the original mediation and no cancellation fee will be paid. If the mediation cannot be rescheduled within this time frame, the agency will pay a cancellation fee not to exceed 25% of the cost of the cancelled mediation session. **NOTE: The agency reserves the right to schedule a different case into the reserved time slot in order to avoid a cancellation fee.**

Will mediators or trainers be compensated for travel?

Listed below is the travel compensation policy used by the Postal Service as an example.

B. Sample Travel Fee Policy

If one way travel exceeds four (4) hours, the trainer and/or mediator will receive:

- \$25.00/hour for travel time that exceeds the minimum four (4) hour travel period. Conversely, travel less than four (4) hours will **not** be compensated.
- This policy includes travel to and from the **scheduled** training and or mediation. Any deviation in travel from the scheduled training or mediation must not be included in the one way travel time.

However, as a guideline, travel must not be paid at a rate which is more that one-half of the mediator's professional daily rate, unless the national program manager authorizes such an amount.

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Be sure to read the agency travel policy as it outlines the procedures to be followed by mediators, who are technically contractors.

C. Sample Mileage Policy

Mileage in excess of 50 miles one way may be reimbursed.

For example, if a mediator travels 52 miles one way, the mediator will be reimbursed for the entire 52 miles. If the mediator only travels 49 miles, she or he receives nothing.

STEP 4: Contact the Purchasing/ Contracting Function In Your Agency

Each agency has unique contracting and purchasing requirements, which are beyond the scope of this manual. If you have completed the first three steps outlined in this section you should be ready to work effectively with your purchasing department. The preliminary steps that you have taken will assist the purchasing department, having created a clear picture of your specific needs.

If you follow these four steps, you will be well on your way to developing an effective, easy to use contracting process. If you do not take the time to do your homework, and attempt to rely on others to take your ideas and “make them fit” within the traditional contracting framework, you most likely will spend more time trying to “fix” the contracting process than working your program. Preparation is the key – don not be so eager to get your program up and running at the expense of creating a strong foundation and framework. Programs without strong foundations often crumble.

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RESOURCES CHECK LIST

- ✓ Have you determined the staff positions necessary for the beginning stages of your program?
- ✓ Are you sure that you are not over or under-staffed?
- ✓ When considering staffing needs have you also considered available financial resources?
- ✓ Does your staffing plan make effective use of the different types of staffing considerations, i.e., full time, part time, shared, etc.?
- ✓ What type of program evaluation will your agency be conducting and who will do the actual work?
- ✓ How will your agency pay for the program evaluation?
- ✓ Is your conflict management program design consistent with available budget and resources?
- ✓ Have you developed a system to track program costs and savings?
- ✓ Are you prepared to track program successes in a way that will help you seek additional support and funding once the program is underway?
- ✓ Does the ADR Coordinator need to attend training, and if so, has it been scheduled?
- ✓ Have you decided what type of training the ADR staff will need and has that training been arranged?
- ✓ Have you considered your potential need for the assistance of a consultant in any stage of the process?
- ✓ Have you done your homework and worked through the four steps necessary to develop effective and useful contracts?
- ✓ Are you using all of your available resources, including the internet, to help you with your tasks?